

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1232

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77-1232

UNITED STATES OF AMERICA,

Appellee,

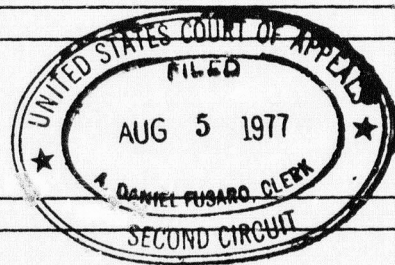
- against -

CARMINE ROTOLO,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEE'S APPENDIX



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAGINATION AS IN ORIGINAL COPY

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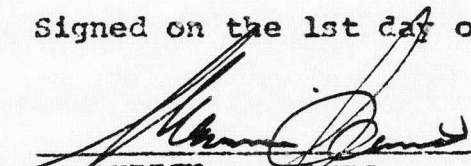
I, MAURICE S. DAVIS, being a duly authorized court stenographer in the Eastern District of New York having reviewed the stenographic record made on November 11, 1976, in the case named U.S.A. vs. Rotolo do hereby make the following corrections in the above transcript of record:

Page 641, line 15; Counts 2, 3 and 7 should be, Counts 2 through 7; and,

Page 641, line 19; Counts 2, 3 and 7, should be Counts 2 through 7.

As corrected, this transcript is a true and accurate record of the aforementioned proceeding.

Signed on the 1st day of July, 1977


MAURICE S. DAVIS

Charge

crime.

You may not infer solely from the existence of one element of a crime, if you conclude that the element has been established, the existence of any other element of the crime.

If any element of the crime has not been established beyond a reasonable doubt, your verdict must be not guilty. On the other hand, you must convict the defendant of a crime charged if each of the elements of the crime has been proved beyond a reasonable doubt.

Now, there is one variation to what I have just described to you with respect to the essential elements of the counts of this indictment. That involves counts 2 through 7. That is the question of aiding and abetting.

As part of the charges in this case, the defendant is charged with having aided or abetted in the commission of the acts described in counts 2 through 7.

Section 2 of Title 18 of the United States Code says in part that whoever...aids or abets the commission of an offense is punishable as if he committed the offense himself. Thus, if you find beyond a reasonable doubt that someone other than the defendant committed an

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✓ Ross

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

DOCKET NO. 76 CR 268(S)

- against -

CARMINE ROTOLO,

MEMORANDUM AND ORDER

Defendant.

----- x

PRATT, J:

On June 15, 1977, the Government filed a motion for an order pursuant to FRCP 36 correcting two alleged errors in the transcript of the trial of this matter. On July 19, 1977, defendant filed the affidavit of his trial and appeal counsel in opposition to the motion. Defense counsel states therein that he is "in no position to state whether the original transcription was correct or whether the second transcription [now urged by the Government] was correct or whether neither are correct".

Specifically, the Government asserts that on page 641 of the transcript, the phrase in line 15 which now reads "Counts 2, 3 and 7" should read "Counts 2 through 7", and that an identical correction is necessary in line 19 of the same page. In support of its claim, the Government has

attached a certification of the court stenographer who recorded the contested wording. The certificate states that after reviewing his stenographic record of the case he has made the corrections now urged by the Government, and that as corrected the transcript is true and accurate.

Fortunately, the wording in question constituted part of my charge to the jury so we are not left solely to the memories of counsel, the reporter and myself. The relevant portion of my written draft of the charge includes the words "counts two through seven". Moreover, the context of this part of the charge confirms that I said "counts two through seven" and not "counts two, three and seven" since I was referring to all six substantive counts of the indictment and there was no reason to speak of counts two, three, and seven and not of counts four, five, and six as well. See Transcript 637-41, 642.

For these reasons, the Government's motion for an order amending both line 15 and line 19 of page 641 of the transcript to read "Counts 2 through 7", instead of "Counts 2, 3 and 7", is granted.

Defense counsel's affidavit suggests that I should

strike the entire record and dismiss the indictment on the ground that the two errors corrected above put the reliability of the rest of the transcript into serious doubt. The suggestion is rejected since not even one other inaccuracy in the whole transcript has been brought to light.

Finally, defense counsel requests an extension of time to revise and resubmit his appellate brief. Such a request, however, should be directed to the Court of Appeals, not this one, and is therefore denied without prejudice.

SO ORDERED.

Dated: July 21, 1977
Westbury, New York.



GEORGE C. PRATT
U. S. DISTRICT JUDGE

AI06



EXHIBIT H NAGRA RECORDING 4/25/75 BETWEEN SCI AND CARMINE
ROTOLO FIRST TEN MINUTES CONTAIN NO CONVERSATION.

UNK. MALE: Hay

De Meterio: Hi Tom

Unk. Male: Who you looking for?

De Meterio: Carmine

Unk Male: Who?

De Meterio: Ah There he is. Carmine how are you?

Rotolo: Hey Hi Lenny?

De Meterio: 11:00 O'Clock Ah

Rotolo: Where were you?

De Meterio: What you mean I was right here

Rotolo: Holy shit

Demeterio: How's it going

Rotolo: You know who I thought that was?

De Meterio: Hiram

Rotolo: I swear to God

Unk. Male: Right, Hiram

De Meterio: So, how's married life

Unk. Male: Alright

De Meterio: Yea, he'll be alright he's going alright.
ay how's technician school.

Unk. Male: You still working over there

De Meterio: No, I'm gonna work for my uncle, now he's a
a private contractor

Rotolo: Is he Is he (unintelligible)

De Meterio: He's crazy get the fuck out here with that kind of

Unk Male: Let me take my neighbor for a sandwich

De Meterio: I tell you Tommy nothin for nothin but you look like
you're going more and more fuckin crazy ;
..... My fuckin radio's broke, this mother fuckin
car.... How's your daughter?

Rotolo: Good

De Meterio: Ha

Rotolo: Those two (2) over there (unintelligible)

De Meterio: Huh

Rotolo: Wait a while, Lenny, wait a while. Those cocksuckers
are the cops and there going to follow us.

De Meterio: Who

Rotolo: You got anything on you at all?

De Meterio: Na .Who's cops?

Rotolo: I'll show you... stay here, stay here... park the
car... you can't see them. Their car's behind the
truck.

Rotolo: You can't see them. They're behind the truck.

De Meterio: Are you losing your fucking mind

Rotolo: Their right there... pull up, just pull up. If you
go far out, they'll think you pulled out... pull
up....good, good... just do a little talking.

De Meterio: So what's the word?

Rotolo: Ah Nothin is happening... you know what I think
my friend is waiting for.... he's going to court
in three (3) days

De Meterio: Court ... for what?

Rotolo: Well he got pinched, you know... for the shit...
he ah

De Meterio: I tell you I think you should go to a doctor.
You look too fuckin nervous

Rotolo: I'm stoned now.

De Meterio: What, did you smoke

Rotolo: Yea

De Meterio: Sure, one day you smoke the other... forget about
it

Rotolo: (Unintelligible) See that, don't look (Unintelligible)

De Meterio: Where?

Rotolo: Behind there.

De Meterio: In that Pontiac?

Rotolo: Yea

De Meterio: This Grand Prix

Rotolo: Yea, don't look..... Yea, definitely, they're
stayang on us... We just gotta split, if they are.

De Meterio: (unintelligible)

Rotolo: Nothing happening I am tell you just ah. The
fucking superfly is in here that's why.

De Meterio: Who that nigger?

Rotolo: Yea. He says, you think they're the man. I said
probably, they look it....

De Meterio: What happen, what did he get pinched for...

Rotolo: Well he got pinched for the other thing and he had a gun on him

De Meterio: Ah, so now he's (unintelligible) ah because that other shit was garbage....

Rotolo: He had the gun on him, so ah he's got to go for the gun thing now. So I guess he doesn't want to do it cause if he gets convicted he'll go away.

De Meterio: That's it, ah? That's your only source

Rotolo: Oh yeah. If he don't he'll probably be back in business. But I don't think he's going away

De Meterio: Yeah

Rotolo: Cause a friend of mine, the same thing. They just wanted to get him off the street. So he beat the dope charge and, ah, they put him away for a gun charge just to get rid of him off the street.

De Meterio: How the hell did he beat the dope charge

Rotolo: Well you know another (unintelligible) I don't know, but he beat it.

De Meterio: Your baby talks good on the phone

Rotolo: Yea, so tell me who's this girl you been seeing, did I ever see her?

De Meterio: Who?

Rotolo: This girl... Still lookin behind you. Still think they're there?

De Meterio: Yea, but they're not Oh, the chick I'm seeing, Carmine, believe me, if this ain't love I'm going to be a priest.

Rotolo: Than much, huh? Everybody got to walk up there one time

De Meterio: That's why I gotta handle one big score, you know like, you know... (unintelligible)

Rotolo: Don't be too anxious just wait, when ever it comes again.

De Meterio: How about this chick?

Rotolo: Na You can't tell she's an imbecile, cause she's got boots on.

De Meterio: What?

Rotolo: Lenny, boots are out now, you don't wear, you know what I mean now..... (Unintelligible)... So it's Love ah

De Meterio: Love, forget about it

Rotolo: (Unintelligible) ... keep going straight,... where you going?

De Meterio: I am going straight

Rotolo: Why couldn't you go over there?

De Meterio: You got the time.

Rotolo: Yea, but were you going to go this way

De Meterio: Oh. What you wanna get a sandwich?

Rotolo: Well I want to see Hiram and then you wanna smoke, right. We took a test today.

De Meterio: What happened?

Rotolo: And I just seen the mark on my paper and I just made it with a 76

De Meterio: You're a technician now

Rotolo: No, I got to go to the computer school now

De Meterio: Not saying,not for nothin that fuckin other shit

Rotolo: Yea, I go: an ounce left.

De Meterio: You got one left?

Rotolo: Yeah,... but I'll get rid of it.. Superfly's selling it for me.

De Meterio: Oh yea

Rotolo: Yea,... but I hope its not

De Meterio: What's happening with that guy Joe?

Rotolo: I don't want to get into nothin no more. But while I was here they started, they wanted to buy. They were calling up Anthony, like bugging him to get to me. Oh sure they blew it because Anthony's uncle is you know, not my uncle so, you know. I told them to go see so and so because I'm gonna go see him. . Yea, so they said they're gonna go see him. They're not gonna go see nobody but it's nothing yet, its been about two (2) weeks.

De Meterio: Real scum bags they are? Ah

Rotolo: Yea

De Meterio: He don't talk to you or nothin

Rotolo: No, I don't see him anymore. I'm in the other building.

De Meterio: Ah, he still over at 26 Broadway?

Rotolo: He's been taking a lot of days off.

De Meterio: Say, he's probably spending the money.

Rotolo: He probably spent it alreadyAh, sometimes I wonder I think this. God just wanted me to be broke, I don't mean broke but you know. I said you want some, ah money, go ahead make it down here but I ain't got nothin..... you know, you don't have what you should have had I'll give you a nice house and some cash for your wife and kid and that's as far out, I don't fuck (unintelligible)...Why should I enjoy all that fuckin money, still we keep looking for more dope, that's the whole thing

De Meterio: Yea, now you gotta pay off the mortgage

Rotolo: Right, I wish I would of paid the house off,...
I was an imbecile really... I just hope I have
another chance

De Meterio: Huh

Rotolo: I just want another chance.....

De Meterio: With this guy it's only....

Rotolo: Smoke, yea Put a little vent in here will
you it's hot. So how long you going out with this
girl?

De Meterio: About a month and a half.

Rotolo: What you got Frankie ... (unintelligible) outside
with her

De Meterio: I met her there you know but now like, you know
it's like me and her, you know

Rotolo: Ah that's nice, huh, new?

De Meterio: I tell you Monday I start work... you gotta work?

Rotolo: Oh, yea, gotta work.

De Meterio: (unintelligible)

Rotolo: Yea, I know, but you didn't tell her you wanted
to get married now

De Meterio: Hey, whatta you want don't get married

all the neighborhoods are the same, Joey got a new car...Hey you got anything, you got anything... Where you goin?

De Meterio: Oh yea Hello Hello

Rotolo: (unintelligible).....?

De Meterio: What?

Rotolo: Unintelligible).... is _____ ?

De Meterio: Carmine one last shot jgut before I get married alright

Rotolo: Gee, I haven't got twenty-thousand for my new... superstar

De Meterio: But we gotta chance, no, of doing something?

Rotolo: How long do you got between you and me

Rotolo: (unintelligible ?

De Meterio: Yea So

Rotolo: Ah...that's where?

De Meterio: Carmine, your har that's all the problem

Rotolo: That's weird, right?

De Meterio: Maybe that's it man, you know

Rotolo: I wonder how you would look with my hair...hairline

De Meterio: Please not evn in a fucking joke

Rotolo: (laughs)....that was good do you realize how you would look? Like...Like this is why we were all made. Like your face does not go with my hair and your hair don't go with my face

De Meterio: Tha't why you're you and I'm me.

Rotolo: That's right you and me
you stoned..?

De Meterio: Yea

/Rotolo: Smoke this whole ... I'm gonna finish smoking.

De Meterio: That guy bugged out, man

Rotolo: I'll tell you... you know that Tommy he was skipping out during the test doing this... Something in my eye... soyou ought to come out Lenny one day.

De Meterio: Come out where?

Rotolo: My house

De Meterio: Na you insulted me a long time ago

Rotolo: Who give a fuck? Send me an invitation see if I come?

De Meterip: Hey, you can say I turned you down two three before I said something...my mouth is dry.

Rotolo: Yea...Well I'll be going to school for six x weeks now....so

De Meterio: Well look.....

Rotolo: You know?

De Meterio: You get in touch with me

Rotolo: Alright, you know we don't have to wait till other shit...We're still frinds, right. We can go for a drink or something

De Meterio: Nana...I can't get in touch with you over there

Rotolo: Alright....What's Frankie's number see if I remember cause I know plenty of times you there and I forget your number?

De Meterio: Ah GE-8...I don't even have pen in the car.

Rotolo: Na...I think I know go ahead

De Meterio: GE8-S101

Rotolo: General Electri 8..8101

DeMeterio: Very good, that good

De Meterio: GE8-101, GP-8-101, g GE8-101... I'm stoned man...

Rotolo: Yea...Hope he let's us out I can't sit there now

De Meterio: What he let's you out for recess?

Rotolo: Alright imbecile the joke is over. Lenny, I wanna pass this test.

De Meterio: Yea, I took that test too man.

Rotolo: I'll hake ing \$400 a week

De Meterio: When I was goin there... you know that

Rotolo: Yea thats right

De Meterio: But I was like all the way down on the list

Rotolo: Do you realize like, ah...you know.. when I get out of this school you say I'll be making four, five hundred a week working the Saturdays and Sundays...I mean now I could breathe you know what I mean

De Meterio: Yea

Rotolo: My bills can be paid.

De Meterio: And then with the othzre thing?

Rotolo: Right... not only that I can show more now if I start making money

De Meterio: (unintelligible)...So I'll leave you right over here

Rotolo: Yea alright...yep

De Meterio: Alright

Rotolo: Alright

De Meterio: Keep in touch with me alright

Rotolo: Yea

De Meterio: That chick tell her...

Rotolo: I see she has green eyes

De Meterio: Tell her... Oh yea how is she?

Rotolo: She looks nice she lost some weight.

De Meterio: She never had none.

Rotolo: Unintelligible....

TRANSCRIPT OF EXHIBIT K

A 1E

Exhibit K - Conversation between SCI and Rotolo

June, 1975

SCI: No answer

Rotolo: Hello

SCI: Good Morning

SCI: How you doing

Rotolo: Good

SCI: What's new

Rotolo: Nothing

SCI: How you been

Rotolo: All right

SCI: Going go to work

Rotolo: I thought you got married on me

SCI: Married

Rotolo: Yeah

SCI: Are you crazy?

Rotolo: Not yet, Lenny. In love he does not call and not doing anything

Rotolo: Still working

SCI: Huh! Yeah I'm working

SCI: You know who I met?

Rotolo: Who?

SCI: Remember that guy in my neighborhood with the beard? Use to go out with a girl from the building.

Rotolo: Oh yeah

SCI: What's his name?

Rotolo: John

SCI: Yeah, he told me you might have something soon, maybe.

Rotolo: Yeah, hold on, someone at the door.

Rotolo: He said he was? Or me?

SCI: No, you.

Rotolo: Know how long ago?

SCI: About three (3) weeks ago, yeah, about three (3) weeks ago. . .

Rotolo: Yeah

SCI: He says that you know that guy was on vacation

Rotolo: Yeah

SCI: When he comes back

Rotolo: Yeah it was about three (3) weeks ago or a month ago

SCI: Yeah right I was talking to him

Rotolo: I'd seen my friend. I . . .

SCI: Yeah!

Rotolo: I'd just happen cause I stay with him and I see him once in a while and I told him that. I had the other thing there.

SCI: What? (unintelligible)

Rotolo: Right!

SCI: Well, what happen . . . no good.

Rotolo: Yeah it's good but it's too much . . . Oh, alright. . .

SCI: What's that?

Rotolo: Alright! Just tell him to hold on for a second.

Rotolo: I am upstairs, I'm now on a computer

SCI: Oh yeah

ALL 15 ?

Rotolo: No - no more in the store room

SCI: Oh! What the hell do I know

Rotolo: Yeah, I forgot to tell you that.

SCI: So how is everybody else? You know, and the house.

Rotolo: Good everything the same

SCI: Good

SCI: So what's happening, you think something will happen

Rotolo: I hope so, I would say so, but I just got to wait

SCI: Yeah that's what I mean

Rotolo: How is your friend, you still see your friend or what

SCI: Who

Rotolo: Frankie

SCI: Yeah I see him

Rotolo: You still going out with the same girl?

SCI: Me

Rotolo: Yeah

SCI: Yeah

Rotolo: That's nice, what you just hang out or go out anything

SCI: You know, engagements and that's it

Rotolo: Engaged

SCI: No

Rotolo: Oh

SCI: Not me you know we go out to clubs

Rotolo: You want to hold on one second

SCI: Yeah go ahead

Rotolo: Yeah hold on

Rotolo: (Talking to someone else - unintelligible)

(PAUSE)

Rotolo: Lenny

SCI: Yeah

Rotolo: Hold on a second, want me to call you back

SCI: Huh?

Rotolo: Want me to call back

SCI: Yeah allright

Rotolo: I'll call you back in about 15 minutes

SCI: Allright

Rotolo: Bye Bye

~~SECRET~~

Rotolo's Return Telephone call

June, 1975

SCI: Hello

Unknown voice: Len you got it

SCI: Yeah - Hello

Rotolo: How you doing

SCI: Hey - alright we're getting ready for a block party

Rotolo: Oh yeah

SCI: Yeah

Rotolo: I heard this is the second one. When I lived in Brooklyn we use to have them

SCI: Yeah it just stopped raining and now they're gonna get the cars off the block and what not

Rotolo: You gonna stop over?

SCI: Yeah over here it stopped

Rotolo: You gonna be participating?

SCI: Of course

Rotolo: Yeah, where you working at? in the city?

SCI: No - I'm working with my uncle

Rotolo: Oh

SCI: No more in the city

Rotolo: And this girl it's very serious huh

SCI: Yeah that why you know you got to do the right thing

Rotolo: Oh! Yeah! I will don't worry about it we will

SCI: Alright she's a good girl

Rotolo: Oh yeah

SCI: None of this superstar shit you know

Rotolo: Yeah

SCI: Like a when she's not with me she's home

Rotolo: Yeah I know what you mean

SCI: You know what I mean

Rotolo: Because you can't find many of them

SCI: Yeah she is, I can't say nothing bad about her. Like when she's not with me like you know she's maybe she's in front of her gate you know shit like that, You know.

Rotolo: Did you tell yer about me?

SCI: Huh! Did I tell her about you?

Rotolo: Yeah

SCI: That how good looking you are?

Rotolo: Yeah

SCI: Of course

Rotolo: Oh

SCI: She wants to meet you

SCI: I said don't flip your wig when you see him

Rotolo: (unintelligible) . . . oldie face?

SCI: Huh

Rotolo: You told her your uncle Carmine

SCI: Yeah, and he still living in the past

Rotolo: My ass I'm living in the past

SCI: What is the telephone number to call, I can't call you in the storeroom now.

-A22

Rotolo: Yeah now I was just going to give 363-5899

SCI: 363-5899

Rotolo: Right

SCI: Okay because first of all to call you in the storeroom it's a chance

Rotolo: No I not there no more, I am on a different floor

SCI: How long have you been there?

Rotolo: Since April

SCI: April - wow you like this better?

Rotolo: I make more money Lenny

SCI: That's good

Rotolo: There no more free time, it depends who you working with so I working with Bobby now

SCI: Huh Oh

Rotolo: So I made him go out, he coming back at (1) one and that I am gonna give out at (1) one. If you with the right guy you can do it.

SCI: Right, Right

Rotolo: Lot of these guys here are hard-ons

SCI: Yeah

Rotolo: But I trained them when I say I trained them they see I don't a fuck, If I want to go. I tell them I'm leaving do you mind, they say no, and I go. Well I told them before I start working I say I won't go out three hours do you want to, like a lot them afraid to.

SCI: Yeah

Rotolo: If they don't do it, then I do it the whole day

SCI: Yeah - (laugh)

Rotolo: And I don't get caught, and if they rat on me, fuck them

A 22

SCI: That's alright

Rotolo: But the don't rat, because I ask them before I leave and they say yeah. What I do is I leave and come back I stay 1/2 hour, 45 minutes.

SCI: That ain't bad man

Rotolo: But now you've got responsibility now because you're working with computers

SCI: Yeah, that's good cause you had to get away from that shit sooner or later

Rotolo: Not only that it one hundred dollars difference at the end of three years that is why I really did it.

SCI: Fuck it man that right

Rotolo: I be making like course now up here I making \$500.00 a week down there I wasn't making that

SCI: Right, thats good how the house and everything?

Rotolo: Good

SCI: Good

Rotolo: Still the same

SCI: Alright listen give me a call again cause we gotta get this shit ready

Rotolo: Well I was gonna, I was over there a few times but I had to come back. I was over on Union Street.

SCI: Oh, the vastedda store.

Rotolo: Where you work, you not around?

SCI: No not in the day.

Rotolo: Where are you at night, like?

SCI: Well now we been practicing football

Rotolo: Yeah I heard you were going to be in a different league, huh?

SCI: Yes, Staten Island

Rotolo: Yeah

SCI: But I'm you know usually like I'm around if I'm not with my girl I'm around

Rotolo: In the club there

SCI: Yeah - you know, so like, you still go out like Mondays and Fridays"

Rotolo: Yeah last night I was out I was in Jersey though

SCI: Yeah like Friday night usually I don't see her. You know I tell her you go out with your friends and I go out with mine.

Rotolo: Where you been going? You don't go to anymore discotheques.

SCI: No

Rotolo: I told you gonna get tired of it.

SCI: I am tired of them really believe me like I like to go to clubs where they have entertainment where I can sit down at the table

Rotolo: Yeah sit down eat dinner. I just that just comes with age that shit .

SCI: I don't know I guess so because I can't make that discotheque scene no more

Rotolo: No me either

SCI: Its not important

Rotolo: Last night I was with this girl in Jersey. I camped over her house

SCI: Nice

Rotolo: Yeah I know her quite a while then I came to work she was there

SCI: She stood there all night

Rotolo: Yeah

SCI: Your old lady ain't gonna bitch

Rotolo: No she knows already

SCI: Oh how's your daughter

Rotolo: Nuts

SCI: (Laughs)

Rotolo: You still smoking or what

SCI: Naw

Rotolo: No?

SCI: No

Rotolo: Wow, that's good though

SCI: You know maybe like once every blue moon you know

Rotolo: That good, I wish I could but these fucking people I stay with

SCI: That's what is man all them people. So like once in a blue moon I'll do it.

Rotolo: Plus I get it for nothin so

SCI: That's even worse other

Rotolo: Listen the next time I work I'll give you a ring or something

SCI: Right, get on the case huh. I gotta get engaged, you know what I mean

Rotolo: Yeah, for the holidays

SCI: Huh

Rotolo: For Holidays

SCI: Maybe if not by the Holidays, by February

Rotolo: Alright

SCI: Alright

Rotolo: I hope something by then

SCI: Yeah I hope so too, take care of yourself

Rotolo: Yeah

SCI: And give me a call every once and a while
you know

Rotolo: Yeah

SCI: Alright

Rotolo: Take care

SCI: Okay - Bye

Rotolo: Bye-bye

September, 1975

Hello

SCI: Is Carmine home?

Yeah hold on a minute

Rotolo: Lenny?

SCI: Yeah, how you doing?

Rotolo: Good, you

SCI: Not much, anything happen?

Rotolo: No.

SCI: Huh

Rotolo: Unintelligible

SCI: What's the matter you sound like you were running

Rotolo: No, I was cleaning the furnace getting ready for the winter.

SCI: Make fires

Rotolo: Yeah

SCI: Oh

Rotolo: I was gonna call you Monday where were you, were you home

SCI: Monday night

Rotolo: Yeah

SCI: What time?

Rotolo: Well I worked overtime you know and I had a couple hours to kill and I wind up going around to my old neighborhood you know.

SCI: No I don't think I was home I went out about seven.

Rotolo: I said you were around though

SCI: Monday night

Rotolo: Yeah

SCI: I was around, my girl babysits on Mondays.

Rotolo: How's work

SCI: Not bad you know same shit

Rotolo: Unintelligible

SCI: You know Frankie bugging me now

Rotolo: Oh year

SCI: Give him a call, give him a call maybe you know he don't want to tell you anything

Rotolo: Yeah

SCI: I says you'd tell me I said

Rotolo: Definitely you said this

SCI: You think anything soon?

Rotolo: I don't know

SCI: WHy that guys nuts

Rotolo: No, no it's just a you know (unintelligible)

SCI: Huh

Rotolo: Monday I am working overtime again

SCI: Yeah

Rotolo: And I'll give you a ring

SCI: Okay

Rotolo: Alright

SCI: Alright

Rotolo: I am gonna take a ride to Brooklyn

SCI: Okay

Rotolo: Alright
SCI: Alright
Rotolo: See you later
SCI: Bye
Rotolo: Thanks for calling

4131

September, 1975

Hello

Rotolo: Lenny

SCI: Yeah how you doing

Rotolo: Good

SCI: What's up?

Rotolo: Nothing, nothin

SCI: You working?

Rotolo: Yeah, what time you going out?

SCI: I gotta go out in a little while I gotta go pick up my girl

Rotolo: Oh, you going somewhere

SCI: Yeah

Rotolo: Alright

SCI: Why you gonna come around

Rotolo: Yeah I was gonna pass, that's alright

SCI: WHat's happening?

Rotolo: Cock

SCI: Yeah

Rotolo: Cock

SCI: You don't see him no more?

Rotolo: No, but anyway I saw somebody else this other guy, they said something was happening

SCI: Did you ckeck into it

Rotolo: A well I need money with this guy, but I just
may see him anyway

SCI: Okay even if you start small

Rotolo: What

SCI: Even if you know just start a little bit

Rotolo: I'll have to

SCI: Right, what you do are you gonna be working the
weekend

Rotolo: No I give you another ring don't worry

SCI: Okay

Rotolo: Alright

SCI: I'm sorry

Rotolo: That's alright

SCI: Alright

Rotolo: Yeah

SCI: Okay

Rotolo: Take care

SCI: Alright bye

Rotolo: Bye Bye

October 9, 1975

Hello

SCI: Is Carmine home?

Child's voice: No

SCI: He not home

Child's voice: No he working

SCI: Oh he's working

Child's voice: Yeah

SCI: Okay will you tell him Lenny called

Woman's voice: Hello

SCI: Hello

Woman's voice: Yeah

SCI: Hello this is Lenny

Woman's voice: Oh yeah Lenny, my daughter

SCI: Oh

Woman's voice: He working

SCI: Oh okay

Woman's voice: Alright

SCI: Yeah

Woman's voice: He'll be home in about 9:30 if you want to
call back

SCI: Oh okay

Woman's voice: I'll tell him you call

SCI: Okay

Woman's voice: Alright

SCI: Thank you

DeMetrio's Return Telephone call to Rotolo

October 9, 1975

Child's Voice: Hello

SCI: Is daddy there?

Child's voice: Yeah he's here

Ro : Hello

SCI: Carmine

Rotolo: Yeah

SCI: What a e you doing?

Rotolo: Hey how are you

SCI: Just got home from work

Rotolo: Yeah, I was thinking of calling you

SCI: Huh

Rotolo: I was thinking of calling you

SCI: When from work

Rotolo: Yeah

SCI: Oh

Rotolo: But I didn't know if you be interested or not

SCI: In what

Rotolo: You know not the normal thing the other thing

SCI: Coke

Rotolo: Yeah

SCI: Weight

Rotolo: Yeah

2
A 34

SCI: Yeah, why not

Rotolo: I'll call you tomorrow

SCI: You let me know tomorrow

Rotolo: Yeah

SCI: What time you let me know

Rotolo: What time you get home

SCI: I get home at, I'm home about quarter to five, but then I gotta go to a party, I gotta leave at six. So call me between ten to five and like a quarter to six, you can't call me then

Rotolo: No

SCI: What time you want a call

Rotolo: Why don't you call me on the job

SCI: Huh

Rotolo: Call me on the job

SCI: Alright let me write down the number

Rotolo: Alright

SCI: What is it? What is it? I'll remember it

Rotolo: You remember 363 right

SCI: Yeah - 363

Rotolo: 5899

SCI: Okay what time you want me to call you

Rotolo: Call about quarter to four

SCI: Okay

Rotolo: I'll see you later

SCI: Okay Bye

No answer

(Another call October 18, 1975, inaudible)

October 19, 1975

Child's voice: Hello

SCI: Is daddy there

Child's voice: No

SCI: He working

Child's voice: Yeah (unintelligible)

Woman's voice: Hello

SCI: Oh no this is Lenny. Is Carmine home?

Woman's voice: No he's not Lenny. He's working.

SCI: Okay - what time will he be home

Woman's voice: Sometimes 9:30 - 10:00 o'clock

SCI: Will it be alright if I call then

Woman's voice: Yeah, sure

SCI: Okay

Woman's voice: Alright

SCI: Thank you, Bye.

October 20, 1975

Woman's voice:	Unintelligible
SCI:	Is Carmine there
Woman's voice:	Who
SCI:	Carmine
Woman's voice:	Could you hold on I'll check
SCI:	Okay, thank you
Woman's voice:	No he's not
SCI:	Okay, thank you
Woman's voice:	You're welcome, bye
SCI:	Bye

October 21, 1975

Woman's voice: Hello

SCI: Is Carmine home?

Woman's voice: Yeah, hold on

Rotolo: I was thinking of you on the train.

SCI: Were you?

Rotolo: Yeah, I was going to call you up because you get home late.

SCI: Yeah

Rotolo: Well I didn't call because something happened to the guy

SCI: He got pinched?

Rotolo: I think so yea, I still didn't hear from my friend (unintelligible)

SCI: He suppose to

Rotolo: Well, just to see him, to tell me what happened (unintelligible)

SCI: Huh

Rotolo: For now I'd just forget about it.

SCI: Yeah

Rotolo: Yeah cause its been two weeks

SCI: Yeah

Rotolo: Yeah (unintelligible) I did see him Monday and he said he'd see me during the week and I haven't seen him since. . . but I'll know for sure Friday.

SCI: Want me to give you a call Saturday. Or why don't you call me

Rotolo: I'll call you up. I'll be working
SCI: Alright
Rotolo: I'll give you a ring Saturday
SCI: Okay
Rotolo: Alright
SCI: Okay
Rotolo: What time are you gonna go out
SCI: Well call me about 10:30
Rotolo: Alright
SCI: Okay
Rotolo: Take care
SCI: Bye

Late October 1975

SCI: Hello

Rotolo: How are you

SCI: Hey how you doing

Rotolo: Alright

SCI: You working?

Rotolo: Yeah I am not there now

SCI: Oh

Rotolo: Nothing up, nothing was new

SCI: No

Rotolo: Unintelligible

SCI: Well look I hope something comes up soon

Rotolo: So do I

Rotolo: You still working

SCI: Yeah

Rotolo: Still in love

SCI: I don't know a yeah

Rotolo: (Unintelligible) When the fuck am I gonna see her

SCI: You going out next Friday

Rotolo: A yeah (unintelligible)

SCI: (Unintelligible) When are you working? Thursday night?

Rotolo: Yeah how did you know

SCI: You always work Thursday? Right

Rotolo: Yeah I'll be working Thursday night

SCI: Well if you want I'll come down

Rotolo: Alright I'll see

SCI: Alright

Rotolo: Alright

Rotolo: (Unintelligible) As soon as anything I'll give you a ring

SCI: Right and I'll come down Thursday night

Rotolo: Alright, how is Frankie?

SCI: Good, good

Rotolo: Good? Tell him I said hello

SCI: Okay

Rotolo: Alright take care

SCI: Alright bye

Rotolo: Bye

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

Delores Byrd being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 25th day of July 19⁷⁷ he served a copy of the within
BRIEF FOR THE APPELLEE AND EX 10 COPIES OF APPENDIX

by placing the same in a properly postpaid franked envelope addressed to:
Howard F. Cerny, Esq.
Pan Am Building, 200 Park Avenue
New York, New York 10017

and deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County
of Kings, City of New York.

Delores Byrd

Sworn to before me this

25th day of July 1977

Barbara A. Allen
BARBARA A. ALLEN
Notary Public, State of New York
No. 24-6646824
Qualified in Kings County
Commission Expires March 30, 1979